

STATE OF MICHIGAN
COURT OF APPEALS

EDMUND R. HUVER, SR.,
and RITA M. HUVER,

UNPUBLISHED
March 26, 1999

Plaintiffs-Appellees,

v

No. 206226
Allegan Circuit Court
LC No. 95-017976 CZ

ALLEGAN COUNTY DRAIN COMMISSIONER,

Defendant,

and

CEDAR CREEK DRAINAGE DISTRICT,

Defendant-Appellant.

Before: O’Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Defendant Cedar Creek Drainage District (hereinafter “defendant”) appeals as of right from the final judgment in this trespass/inverse condemnation action, challenging the trial court’s denial of defendant’s motion for new trial or remittitur and the trial court’s award of mediation sanctions for plaintiffs. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant contends that the jury’s award of \$7,500 in “nominal” damages should be set aside because “nominal” damages have no appreciable value and involve only very small symbolic or token amounts such as a few cents or one dollar. We disagree.

In this case, the jurors were instructed that it was for them to decide what a “nominal” sum is, and the jurors were given no specific definitions or guidance regarding the meaning of “nominal damages” other than the indication that nominal damages could be awarded only if “actual” damages were not. Additionally, because the jury instructions and verdict form limited the measure of “actual” damages to the difference between the value of plaintiffs’ property before and after the trespass/inverse

condemnation, the jurors may have been led to believe that “nominal” damages could include all other types of compensatory damages, such as exemplary damages to compensate for injury to plaintiffs’ feelings, for example. Moreover, the use of blank spaces on the verdict form which were large enough to accommodate a five or six-figure dollar award for either “actual” or “nominal” damages could have caused the jurors to believe that a substantial, four-figure sum could be awarded as “nominal” damages.

There is no indication in the limited record before us that defendant ever objected to the verdict form or to trial court’s jury instructions allowing the jurors to interpret the meaning of “nominal” damages for themselves. Thus, under MCR 2.516(C), defendant’s claim of instructional error is not preserved for appeal. Nor does it appear that defendant ever requested any instructions specifically defining the meaning of “nominal” damages or precluding the jury from awarding more than a small, token amount for nominal damages. At most, defendant merely proffered a proposed jury instruction which suggested \$1.00 as an example of a nominal amount, and defendant failed to preserve any objection to the trial court’s modification of its proposed instruction in this regard. Accordingly, defendant should not now be heard to complain that the jury’s interpretation of “nominal” damages was incorrect. *Hall v Citizens Ins Co of America*, 141 Mich App 676, 682-683; 368 NW2d 250 (1985). For the same reason, we likewise reject defendant’s challenge to the trial court’s award of mediation sanctions based upon the size of the jury’s “nominal” damages award.

Affirmed.

/s/ Peter D. O’Connell

/s/ Kathleen Jansen

/s/ Jeffrey G. Collins